FILED
JUN 27 1977
CLERK

IN THE

Supreme Court of the United States

October Term, 1976

No. 76–1683

NATIONAL BARREL & DRUM ASSOCIATION, INC.,

Petitioner,

v.

UNITED STATES OF AMERICA and the
INTERSTATE COMMERCE COMMISSION,

Respondents,

STEEL SHIPPING CONTAINER INSTITUTE,

Intervenor/Respondent.

INTERVENOR'S BRIEF IN OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

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June 27, 1977

DI CESARE - Printing — 331-6101 — Washington, D.C. 20006

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The Steel Shipping Container Institute (SSCI), as Intervenor in the Court of Appeals for the District of Columbia Circuit in this proceeding in support of the United States and the Interstate Commerce Commission, respectfully requests that the petition for writ of certiorari, to review the

judgment and opinion of that court entered in this proceeding on February 4, 1977, be denied.

REASONS FOR DENYING THE PETITION

Rule 19 of the Rules of the Supreme Court make clear that a review on writ of certiorari is not a matter of right, but of sound judicial discretion, and will be granted only where there are special and important reasons therefor. Representative of special and important reasons is a decision of a court of appeals rendered in conflict with the decision of another court of appeals on the same matter. Petitioner National Barrel & Drum Association (NBDA) has not contended that such a conflict exists.

Rule 19 also indicates that if a court of appeals has decided an important question of federal law which has not been, but should be, settled by the Supreme Court, then the matter may be heard. Here the decision of the Court of Appeals for the District of Columbia Circuit was to refuse to review a decision on a suspension case that had been decided by the Interstate Commerce Commission. The dismissal of the petition for review was based soundly on motions for dismissal, properly citing decisions of this Court such as *Arrow Transportation Co. v. Southern Railway Co.*, 37 U.S. 658 (1962). Such a well-founded decision hardly raises the type of important federal question to warrant review by this Court.

Rule 19 also illustrates bases for review on certiorari where a court of appeals has decided a case in conflict with applicable decisions of the Supreme Court. No such contention has been made by NBDA.

Finally, Rule 19 acknowledges that the Supreme Court may exercise its power of supervision over the circuit courts

of appeals but, of course, no such matter is raised in this proceeding.

SSCI contends that the petition for certiorari filed by the NBDA is merely the effort of a frustrated litigant, dissatisfied with the decisions of administrative bodies and courts below. The time of the Supreme Court, however, is too limited to devote to soothing the injured sensibilities of litigants, without those litigants also showing the special and important federal reasons illustrated by Rule 19 to justify such an expenditure of time.

CONCLUSION

The NBDA's petition for writ of certiorari has failed to cite any major federal question decided by the Court of Appeals for the District of Columbia Circuit that would warrant the exercise of discretionary review by the Supreme Court. Accordingly, SSCI respectfully urges denial of NBDA's petition for issuance of a writ of certiorari to that lower court in this proceeding.

Respectfully submitted,

STEEL SHIPPING CONTAINER INSTITUTE

By _____
LAWRENCE W. BIERLEIN
Its Attorney

910 Seventeenth Street, N.W.
Washington, D.C. 20006
(202) 659-9475

June 27, 1977

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing Brief in Opposition to the Petition for a Writ of Certiorari were mailed this day, first class postage prepaid, to counsel for petitioner National Barrel & Drum Association, respondent United States, respondent Interstate Commerce Commission, and the National Classification Committee of the American Trucking Associations, Inc. All parties required to be served have been served.

LAWRENCE W. BIERLEIN

June 27, 1977

APPENDIX

APPENDIX

IN THE

United States Court of Appeals

FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 76-2091 September Term, 1976

FILED: JAN. 14, 1977

National Barrel and Drum Association, Inc.,
Petitioner

v.

Interstate Commerce Commission and
United States of America,
Respondents

ORDER

On consideration of the motion of the Steel Container Institute for leave to intervene herein, it is

ORDERED that the aforesaid motion is granted.

Counsel for the aforesaid intervenor may participate in oral argument only to the extent allowable under Rule 12 of the General Rules of this Court.

FOR THE COURT:

GEORGE A. FISHER, Clerk

by: Daniel M. Cathey
First Deputy Clerk